

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,		C063347
Plaintiff and Respondent,		(Super. Ct. No. 08F07682)
v.		
ISSAC SAMUEL BRILINGTON,		
Defendant and Appellant.		

A jury found defendant Issac Samuel Brilington guilty of second degree robbery and criminal threats.

The victim, a college student, testified that in 2008 he made money by buying electronic game items from eBay and craigslist and bundling and reselling them. In April 2008, he contacted defendant's brother, a minor, through craigslist. They met at defendant's house to trade an Xbox 360 game system for a PlayStation 3 game system.

In August 2008, the victim and defendant's brother communicated about another deal in which the victim would receive a PlayStation 3 and \$1,000 and would give defendant's brother a laptop and an XBox. They met in a Wal-Mart parking lot at 6:30 p.m. on September 1, 2008. Defendant was in a car with his brother in the passenger seat. The items were

examined, and defendant asked to see the victim's iPhone. Defendant's mother was supposed to have the money, and defendant suggested they move closer to a nearby restaurant where his mother would be. The items were put in defendant's car and the victim got in the backseat. When they arrived, defendant and the victim got out of the car and defendant asked to see the victim's iPhone again while they waited. Once the victim gave defendant the iPhone, defendant said he was not happy with the prior transaction and, according to the victim, "he was gonna take all my stuff." Defendant closed the car door, and when the victim asked for his iPhone, defendant said, in a threatening voice, "'Back up before I shoot you.'" And then he slammed the door and drove off." Although the victim had been scared, after defendant threatened him, the victim had reached for his iPhone, "And then he pushed me back, and he closed the door."

Peace officers found the victim's laptop during a warrant search of defendant's house.

The defense, pointing to inconsistencies in the evidence, argued that the victim made up the story.

The jury found defendant guilty as charged.

The trial court sentenced defendant to the low term of two years in state prison for robbery and imposed and then stayed a low-term sentence for criminal threats. Defendant timely appealed. Based on appellate counsel's request, the trial court forwarded to this court a new abstract of judgment, correcting some fines and increasing defendant's custody credits.

We appointed counsel to represent defendant on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

Counsel filed a brief setting forth the facts of the case and requested this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende, supra*, 25 Cal.3d at p. 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

It appears that in increasing defendant's custody credits pursuant to appointed appellate counsel's request, the trial court miscalculated. The record shows that defendant was in custody from the date of his arrest (September 17, 2008) until the date he posted a bail bond (September 27, 2008) for 11 actual days of custody. He was remanded when the jury verdicts were returned (September 3, 2009) and remained in custody before the date of sentencing (October 16, 2009) for an additional 44 actual days of custody. This entitled him to 55 days of *actual* credit, but the amended abstract awards him 55 days of *total* credit.

Defendant's robbery conviction is a "violent felony" under Penal Code section 667.5, subdivision (c)(9). Accordingly, he accrued presentence *conduct* credits in an amount no more than 15 percent of his actual credits, and he is not entitled to the benefit of the more generous credit formula recently enacted. (Pen. Code, §§ 2933.1, 4019, subds. (b) & (c).) Contrary to an implication in appointed appellate counsel's request to the

trial court, rounding up is not permitted. (*People v. Ramos* (1996) 50 Cal.App.4th 810, 815-817.) Accordingly, defendant is entitled to eight days of conduct credits, not the nine requested by counsel ($55 \times .15 = 8.25$).¹

We modify the judgment to award defendant 55 days of actual custody credit and eight days of conduct credit, for a total award of 63 days.

Having examined the entire record, we find no other arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The trial court is directed to correct the January 7, 2010, amended abstract of judgment to reflect 55 days of actual custody credit and eight days of conduct credit, for a total award of 63 days and to forward a certified copy of the corrected abstract to the Department of Corrections and Rehabilitation. The judgment, as modified, is affirmed.

We concur: ROBIE, J.

HULL, Acting P. J.

BUTZ, J.

¹ Because this conclusion seems noncontroversial, we have proceeded without soliciting supplemental briefing. Any party aggrieved by this conclusion is free to exercise the remedy provided by Government Code section 68081.